

JUL 03 2006**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERNEST G.M. ROWLAND,

Defendant - Appellant.

No. 05-10375

D.C. No. CR-03-00105-ARM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Guam
Alex R. Munson, Chief Judge, Presiding

Argued & Submitted June 13, 2006
Honolulu, Hawaii

Before: B. FLETCHER, PREGERSON, and CANBY, Circuit Judges.

Defendant-Appellant Ernest G.M. Rowland appeals the denial of his motions to suppress evidence and for pretrial discovery related to his conviction for possession with intent to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(viii). We have jurisdiction over this appeal under 28 U.S.C.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

§ 1291. We conclude that the district court properly denied the motion to suppress because the totality of the circumstances gave rise to a reasonable suspicion that criminal activity was afoot. We further hold that the district court did not abuse its discretion when it denied the motion for pretrial discovery. The facts are known to the parties and we do not recite them here.

We review *de novo* the district court's denial of a motion to suppress. *See United States v. Crawford*, 372 F.3d 1048, 1055 (9th Cir. 2004) (en banc). To determine whether an informant's tip generates probable cause or reasonable suspicion, we consider, *inter alia*, the informant's veracity and basis of knowledge. *See Illinois v. Gates*, 462 U.S. 213, 238 (1983). While the probable cause requirement for a warrant requires a "fair probability that contraband or evidence of a crime will be found," reasonable suspicion is less demanding and "can arise from information that is less reliable than that required to show probable cause." *Alabama v. White*, 496 U.S. 325, 330 (1990) (citations omitted).

Here, the informant, although not of proven reliability, made himself¹ known to authorities and met with them. The informant provided information based on his personal knowledge because he had "dealt with [Rowland] in the past." Further,

¹ We refer to the informant as a male, although the record makes clear that the informant's gender was not disclosed.

the informant gave a general description of Rowland, predicted Rowland's future travel from Hawaii to Guam, and stated that Rowland was on probation in Hawaii. Drug Enforcement Administration agents corroborated the informant's tip by contacting the probation office in Hawaii and confirming that Rowland lived in Hawaii and was on probation there. The probation office in Hawaii also disclosed Rowland's criminal history that included drug convictions. Under the totality of the circumstances, the Guam Customs officer² had "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant[ed]" stopping Rowland.³ *Gates*, 462 U.S. at 238.

We review for an abuse of discretion the district court's decision whether to disclose the identity of a confidential informant. *See United States v. Henderson*, 241 F.3d 638, 646 (9th Cir. 2000). Although an informant's identity must be revealed if it is "relevant and helpful to the defense of an accused," *see Rovairo v. United States*, 353 U.S. 53, 60-61 (1957), the defendant's need for information

² Guam Customs officers have the authority to arrest individuals who traffic in controlled substances. *See* 5 Guam Code Ann. § 73102(1); *see also* 9 Guam Code Ann. § 67.601(a).

³ Because we conclude that the stop was justified by reasonable suspicion, we express no opinion on whether Rowland's stop at Guam Customs was a "border search" within the meaning of *United States v. Montoya de Hernandez*, 473 U.S. 531 (1985).

must be balanced against the value of ensuring the safety of informants, *see United States v. Napier*, 436 F.3d 1133, 1136 (9th Cir. 2006). A defendant does not have an “unlimited right to access all information possibly needed.” *Napier*, 436 F.3d at 1136. Here, the district court properly considered the circumstances of this case, including “the crime charged, the possible defenses, the possible significance of the informer’s testimony, and other relevant factors.” *Rovairo*, 353 U.S. at 62. We hold that the district court did not abuse its discretion when it denied the discovery motion.

For the foregoing reasons, the district court is **AFFIRMED**.